IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15823 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHIBEN WD/O.RAMANBHAI D.AMIN

Versus

DANABHAI PASHABHAI VANKAR

Appearance:

1. Special Civil Application No. 15823 of 2004

MR RA PATEL for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/02/2005

ORAL JUDGEMENT

#. In this petition filed under Article 227 of the

Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 4.4.1997 passed in Revision Application No.TEN.BA.477 of 1989 in dismissing the same and confirming the order passed by the Deputy Collector (Land Reforms) Appeals, Kheda dated 21.3.1988 in Tenancy Appeal No.217 of 1987 in dismissing the same and confirming the order passed by the Mamlatdar and ALT, Khambhat dated 30.6.1987 in Tenancy Case No.62 of 1986 under Section 32(1)(b) of the Bombay Tenancy and Agricultural Lands Act ("the Act" for short) declaring respondent No.1 as tenant with regard to the land in question.

#. The application was submitted by respondent No.1 herein - original applicant for declaring him as tenant under Section 32(1)(b) of the Act in the year 1986 before the Mamlatdar and ALT, Khambhat which was registered as Ganot Case No.62 of 1986. The Mamlatdar and ALT, Khambhat by his order dated 30.6.1987 allowed the said application and declared that respondent No.1 herein is a tenant of the disputed land and directed to hand over the possession to him by taking possession of the land from the original land owner - the petitioner herein on fixing the purchase price under the provisions of the Act. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Khambhat dated 30.6.1987 in Tenancy Case No.62 of 1986, the petitioner preferred Tenancy Appeal No.217 of 1987 before the Deputy Collector (Land Reforms) Appeals, Kheda which came to be dismissed by the Deputy Collector by his order dated 21.3.1988. Being aggrieved and dissatisfied with the said order passed by the Deputy Collector (Land Reforms) Appeals, Kheda in Tenancy Appeal No.217 of 1987, the petitioner preferred Revision Application No.TEN.BA.477 of 1989 before the Gujarat Revenue Tribunal, Ahmedabad which came to be dismissed by the Gujarat Revenue Tribunal by its order dated 4.4.1997 on the ground that the said revision application is filed beyond the period of limitation. Being aggrieved and dissatisfied with the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 in Revision Application No.477 of 1989, the petitioner has preferred this petition under Article 227 of the Constitution of India on 16.6.2004, i.e. after a period of seven years of dismissing the revision application by the Gujarat Revenue Tribunal.

#. Mr.R.A.Patel, learned advocate appearing for the petitioner, has submitted that as the petitioner is of old age and illiterate, she was not aware of the proceedings and the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 in Revision Application

No.TEN.BA.477 of 1989 and that her daughter Kailashben Amin is residing at America, and, therefore, there is a delay in preferring the present special civil application challenging the order passed by the Gujarat Revenue Tribunal dated 4.4.1997, and, therefore, requested to entertain the present petition by condoning the delay.

#. In response to the notice issued by this Court, Mr.D.J.Bhatt, learned advocate appears for respondent No.1 - tenant. Affidavit-in-reply is also filed on behalf of respondent No.1. It is specifically denied that the petitioner was not having knowledge of the dismissal of the revision application by the Gujarat Revenue Tribunal on 4.4.1997. It is submitted that after dismissal of the revision application by the Gujarat Revenue Tribunal and confirming the order passed by the Deputy Collector as well as the Mamlatdar under Section 32(1)(b) of the Act, respondent No.1 herein filed Tenancy Case No.12 of 1998 against the petitioner and other family members of the petitioner under Section 32-G of the Act which came to be allowed on 5.12.2001. It is further submitted that by the aforesaid order, purchase price was determined of the land in question and he has also paid purchase price on 29.1.2003 and that purchase certificate also came to be issued by the competent authority in the year 2003 itself and necessary entry in the revenue record was also mutated by way of entry No.14140 which also came to be certified, against which the petitioner had preferred RTS Appeal No.64 of 2003 and the said appeal came to be dismissed on 14.10.2003 by the competent authority. It is further submitted that, in fact, against the fixation of the purchase price, the appeal has been preferred before the Deputy Collector, Anand being Appeal No.17 of 2002 which is still pending. It is, therefore, submitted that in view of the aforesaid facts, the petitioner was well within the knowledge of the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 and if the petitioner can challenge the order of fixing the purchase price before the Deputy Collector, Anand, being Appeal No.17 of 2002 and even the entry No.14140, then the petitioner ought to have challenged the order passed by the Gujarat Revenue Tribunal dated 4.4.1997. Under the circumstances, it is requested to dismiss the present petition on the ground of delay and also on the ground that the petitioner has not come with the clean hands since the petitioner has not stated correct facts. It is further submitted that the present petitioner has also filed the civil suit No.17 of 2002 before the court of the learned Civil Judge (JD), Khambhat for declaration and injunction on 12.2.2002 in which the application below Exh.5 was submitted by the

petitioner for injunction which came to be rejected and the petitioner has not stated these facts and has suppressed the same, and, therefore, requested to dismiss the present petition on that ground also.

#. There is no counter or affidavit-in-rejoinder filed by the petitioner to the affidavit-in-reply filed on behalf of respondent No.1. The factum of passing the order under Section 32-G of the Act in Tenancy Case No.12 of 1998 dated 5.12.2001 and determining the purchase price by the competent authority has not been disputed by the petitioner. It is also not disputed by the petitioner that respondent No.1 has paid purchase price and necessary certificate came to be issued in his favour. It is also not disputed by the petitioner that in pursuance of the certificate issued in favour of respondent No.1 - tenant, entry No.14140 was made in the revenue record and against which, the petitioner and others have preferred RTS Appeal No.64 of 2003 which came to be dismissed on 14.10.2003. It is also not disputed by the petitioner that against fixation of the purchase price, the appeal has been preferred by the petitioner and her family members before the Deputy Collector, Anand being Appeal No.17 of 2002 in the year 2002 itself. The purchase price came to be fixed and determined by the authority on the basis of the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 dismissing the said revision application confirming the order passed by the Mamlatdar and ALT under Section 32(1)(b) of the Act, and, therefore, it cannot be said that the petitioner has no knowledge with regard to the order passed by the Gujrat Revenue Tribunal dated 4.4.1997. Not only that, but the petitioner had preferred the appeal before the Deputy Collector, Anand, being Appeal No.17 of 2002 challenging the order passed by the competent authority under Section 32-G of the Act fixing and determining the purchase price. If the petitioner can prefer the appeal before the Deputy Collector, Anand challenging the order of determining the purchase price under Section 32-G of the Act, certainly, the petitioner ought to have challenged the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 before this Court. On the contrary, the petitioner has preferred the present petition in the month of June 2004, i.e. after a period of seven years. The contention and submission on behalf of the petitioner that as the petitioner is of old age and she was not aware of the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 cannot be accepted in light of the facts stated above.

#. Under the circumstances, the present petition filed

under Article 227 of the Constitution of India which is filed in the year 2004 challenging the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 i.e. after a period of seven years, is not required to be entertained on the ground of delay and laches.

#. Under the circumstances, there is no substance in the present petition and hence the same is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated forthwith.

(M.R.Shah,J)

(pathan)